W. T. STALLS

IBLA 74-230 Decided November 11, 1974

Appeal from decision of Colorado State Office, Bureau of Land Management, rejecting appellant's oil and gas lease applications C-19890 through C-19893.

Set aside and remanded.

1. Mineral Leasing Act: Environment -- National Environmental Policy Act of 1969: Generally -- Oil and Gas Leases: Applications: Generally

   A decision rejecting oil and gas lease applications for public land in a national forest because the Forest Service has not finished an environmental impact statement on wilderness classification of the area will be set aside and remanded for the Bureau of Land Management, in the exercise of its delegated discretion to lease public lands for oil and gas, first to determine whether it should prepare an environmental impact statement as the lead agency responsible for mineral leasing, and then to act on the offers accordingly.

APPEARANCES: W. T. Stalls, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

W. T. Stalls has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated February 21, 1974, which rejected his oil and gas lease offers C-19890 through C-19893. The offers were filed pursuant to the noncompetitive leasing provisions of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226(c) (1970), for lands in T. 15 S., R. 89 W., 6th P.M., in the Gunnison National Forest, Colorado.

The State Office rejected the offers because it concluded leasing would be incompatible with the wilderness character of the lands applied for. It based its conclusion on a letter from the Forest Service dated February 15, 1974, which stated that the lands applied for are in a Forest Service Inventoried Roadless Area, except for some of the land in application C-19893, which is in the designated West Elk Wilderness. The Forest Service letter recommended rejection of the offers since it could not make an informed recommendation until it had completed an environmental impact statement, pursuant to section 102 of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332 (1970), on potential wilderness classification of the area.

In his appeal, Mr. Stalls argues that he is ready and able to minimize the impact of his operation and restore the lands to their present condition if necessary. He argues that the "energy crunch" mandates leasing lands for exploration and development, especially where the geology of the lands indicates a "favorable accumulation of hydrocarbons" as he maintains it does here.

The Mineral Leasing Act of 1920 vests the Department of the Interior with the discretion to lease public lands for oil and gas. 30 U.S.C. § 226(a) (1970); Udall v. Tallman, 380 U.S. 1 (1965). This discretion to lease or not to lease is vested in this Department for oil and gas leasing of public lands in the national forests as well. 30 U.S.C. § 181 (1970). Although this Department gives most careful consideration to the recommendations of the Forest Service, the latter does not have a veto power over public land leasing. 1/ George A. Breene, 13 IBLA 53 (1973); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

Insofar as the decision below is predicated on the idea that the lands involved cannot be leased until the Forest Service environmental impact statement regarding wilderness classification is filed and acted upon, and until the Forest Service recommends leasing, it is in error. Furthermore, under the Guidelines for Federal Agencies under the National Environmental Policy Act, issued by the Council on

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1/ Public land leasing is to be distinguished in this regard from leasing acquired lands under the provisions of the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970). See O. C. Welch, 11 IBLA 163 (1973); Susan D. Snyder, 9 IBLA 91 (1973); Duncan Miller, 6 IBLA 216, 79 I.D. 416 (1972).

Environmental Quality, the Bureau of Land Management, Department of the Interior, is the agency with "primary authority" for oil and gas leasing on these national forest lands. As such, it is the "lead agency" responsible for preparing the environmental impact statement if it is determined that oil and gas leasing in this roadless area 2/ is a federal action "significantly affecting the quality of the human environment" within the meaning of section 102 of NEPA, 42 U.S.C. § 4332(c) (1970). 40 CFR 1500.7(b), promulgated at 38 F.R. 20549 (1973).

The discretionary authority of this Department to lease or not to lease these public lands appears not to have been exercised in this case. The Forest Service was unprepared to make a recommendation for or against leasing in this case. The deference given to the Forest Service's eventual preparation of an environmental impact statement on wilderness classification manifests an erroneous conception of the BLM's duty under NEPA as the lead agency in mineral leasing on public lands. Accordingly, the decision below is set aside and the case is remanded to the BLM for it to consider whether a NEPA environmental impact statement is appropriate here. If it concludes such a statement is required, it will consult with and obtain the views of the Forest Service, as required by 42 U.S.C. § 4332(c) (1970), and the implementing regulations, 40 CFR 1500.7 (38 F.R. 20549 (1973)). The offers should then be reevaluated. If BLM concludes an environmental impact statement is unnecessary, it should proceed as customary to evaluate the offer under this Department's discretionary authority to lease or not to lease, Udall v. Tallman, supra; Duesing v. Udall, 350 F.2d 748, 751-52 (D.C. Cir. 1965), in light of the comments of the Forest Service, and, as to the lands in the wilderness area, in light of the regulations and proposed stipulations of the Forest Service. See 43 CFR 3111.1-3(f).

It is therefore unnecessary to examine appellant's specific contentions, and premature to adjudicate whether appellant is entitled to any of the leases applied for.

2/ This conclusion is no different for the portion of the land in application C-19893 within the West Elk Wilderness. Formal designation as wilderness does not alter the duty and discretion of this Department under NEPA and the Mineral Leasing Act. See 16 U.S.C. § 1133(d)(3) (1970), which provides that leasing in wilderness areas in national forests is subject to "such reasonable stipulations as may be prescribed by the Secretary of Agriculture for the protection of the wilderness character of the land consistent with the use of the land for the purposes for which they are leased * * *."

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for appropriate action in the light of this decision.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge